

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ANDREW BURGESS,

Plaintiff,

v.

CENTRAL BUCKS SCHOOL DISTRICT, ABRAM
M. LUCABAUGH, in his official and individual
capacity,

Defendants.

Civil Action No: 2:23-cv-1369-TJS

FILING UNDER SEAL

To the Clerk: This is filing is made under seal. Kindly direct a copy to Judge Savage. I have served Defendants' counsel with this motion and proposed order, but am not at this time sharing with her the exhibits. Thank you.

ACLU OF PENNSYLVANIA

By: /s/ Witold J. Walczak

Witold Walczak (PA ID 62976)

Richard Ting (PA ID 200438)

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PLAINTIFF’S MOTION TO FILE UNDER SEAL

Pursuant to Local Civil Rule 5.1.2(6), Plaintiff Andrew Burgess moves to file under seal the two attached exhibits to Plaintiff’s Amended Complaint. The attached exhibits relate to allegations in Plaintiff’s Amended Complaint and contains information Plaintiff is prohibited from publicly disclosing under Section 17b of the Pennsylvania Educator Discipline Act, 24 P.S. § 2070.17b. Plaintiff, therefore, seeks to file the attached exhibits under seal.

Counsel for Plaintiff has conferred with counsel for Defendants, who opposes this motion. Plaintiff is sharing a copy of this motion with Defendants’ counsel, but is not sharing the two exhibits until either this Court directs Defendants to keep the document confidential (included in proposed order) or Defendants’ counsel signs a protective order.

August 14, 2023

ACLU OF PENNSYLVANIA

By: /s/ Witold J. Walczak

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Attorneys for Plaintiff Andrew Burgess

CERTIFICATE OF SERVICE

Pursuant to Local Civil Rule 5.1.2(6), the foregoing document is being filed via email to ECF_Documents@paed.uscourts.gov. Defendants are being served via email to their counsel of record, Sharon O'Donnell, who consented in writing to service via email to smodonnell@mdwgc.com by registering as an ECF Filing User.

Dated: August 14, 2023

s/ Witold J. Walczak
Witold J. Walczak
Counsel for Plaintiff



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

August 24, 2022

CONFIDENTIAL

Andrew Burgess
250 Parker Avenue
Philadelphia, PA 19128

Re: Educator Misconduct Complaint

Dear Mr. Burgess:

I write to notify you that the Pennsylvania Department of Education's Office of Chief Counsel received an educator misconduct complaint alleging that you engaged in professional misconduct. More specifically, the complaint alleged that you kept a list of "19 bullying incidents" that had taken place with peers in the classrooms and/or hallways and these incidents were never reported to the building administrators. As explained more fully below, we have determined that the allegations in the complaint are legally sufficient to warrant discipline.

Pursuant to the Educator Discipline Act, 24 P.S. §§ 2070.1a – 2070.18c, upon receipt of an educator misconduct complaint against an educator, the Office of Chief Counsel determines whether the complaint alleges facts which, if true, are sufficient to support disciplinary action. See 24 P.S. § 2070.9(e). On that basis, we have determined that the allegations set forth in the complaint, if found to be true, are sufficient to warrant discipline and we will now conduct a preliminary investigation.

As part of our preliminary investigation, we will seek information in order to determine whether there is probable cause to proceed. The law authorizes the Department to direct you to provide documentation reasonably required in the pursuit of our preliminary investigation. See 24 P.S. § 2070.9(e)(2.1). Thus, please provide a copy of the following documentation:

- 1) A copy of your resume; and
- 2) Any other documents or information that you wish to submit.

Please forward any documents to my attention at the address below.

After completing the preliminary investigation, we will make a probable cause determination. If there is no probable cause that grounds for discipline exist, the complaint will be dismissed and no disciplinary action will be taken. If, however, probable cause does exist, the Department may forward

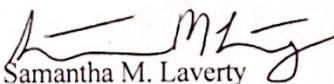
Release or publication of this document is a crime and may result in a conviction of a third degree misdemeanor. 24 P.S. § 2070.17b.

its preliminary findings to the relevant school entity for a complete investigation of this matter. In the alternative, the Department may elect to conduct its own investigation.

Please be aware that the allegations set forth in the complaint, if determined to be true after a hearing, could result in discipline. Discipline, as defined by the Educator Discipline Act, includes the following actions: a private or public reprimand; the suspension, revocation or surrender of a certificate or eligibility to be employed as a charter or cyber charter school staff member or contracted educational provider or contracted educational provider staff member; or supplemental sanctions. See 24 P.S. § 2070.1b. You are entitled to be represented by legal counsel, at your expense, throughout this process. Legal representation may be provided at no cost through your local teacher's union. Please be advised that this complaint will remain open and pending until you receive written verification from the Department of its closure.

Finally, please be advised that any information that you learn as the result of the Department's investigation in this matter is strictly confidential. Even the fact that an educator misconduct complaint has been filed or that the Department is conducting a preliminary investigation is confidential. The Educator Discipline Act provides that any unauthorized release of confidential information is a misdemeanor of the third degree. See 24 P.S. § 2070.17b. You may however, share this letter with your attorney. The Educator Discipline Act, which sets forth in detail the disciplinary procedures and confidentiality requirements, can be accessed on the Department's website at: www.pspc.education.pa.gov/educatordisciplineact. A copy of the Act will be provided upon request.

Sincerely,


Samantha M. Laverty
Assistant Counsel

Release or publication of this document is a crime and may result in a conviction of a third degree misdemeanor. 24 P.S. § 2070.17b.



September 1, 2022

Samantha M. Lavery, Assistant Counsel
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Richard W. Askey, *President*
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Jeffrey D. Ney, *Treasurer*
James G. Vaughan, *Executive Director*

Re: Educator Misconduct Complaint
Burgess, Andrew

Dear Ms. Lavery:

Please be advised that I represent Mr. Andrew Burgess regarding the Educator Misconduct Complaint letter that you sent to him dated August 24, 2022. Please direct all future correspondence to my attention. Mr. Burgess will not be providing any additional information, other than what I state in this letter.

Mr. Burgess does not agree that he engaged in any educator misconduct. The events, as alleged in your letter, are incorrect. First, there was not a reporting obligation as required by law and/or PA code for the incident that was alleged. Second, and most importantly, Mr. Burgess did not ignore the student's complaints. He assisted the student and/or his parents with respect to how best to report those alleged incidents through the administration and/or other outside agencies.

As a result, I am requesting that you review this matter and determine that there is no cause for any further investigation and/or discipline. Again, any questions or comments do not hesitate to contact me directly.

Very truly yours,

A handwritten signature in black ink, appearing to read "CHLH", is written over a horizontal line.

CHARLES L. HERRING

CLH/nrr

cc: Andrew Burgess
Katherine M. Voye, Esquire (PSEA Assistant General Counsel)

The PSEA Mission

We are members who promote, protect, and advocate for our schools, students, and professions.

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[PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION TO FILE UNDER SEAL

AND NOW, this ____ day of _____ 2023, upon consideration of Plaintiff's Motion to File Under Seal, it is **HEREBY ORDERED** that the Motion is **GRANTED**.

Defendants' counsel is directed to keep the two exhibits confidential until and unless otherwise ordered by the Court, sharing only with Defendant Lucabaugh and CBSD Board members, as necessary, all of whom also shall maintain the documents' confidentiality.

The Clerk's Office is directed to upload the sealed document to the ECF system under the appropriate setting.

BY THE COURT

The Honorable Timothy J. Savage